



July 2, 2015

MEMORANDUM

TO: Gregory R. Baker
Deputy General Counsel – Administration

Jeff S. Jordan
Assistant General Counsel

AUDIT REFERRAL # 15-05

THROUGH: Alec Palmer
Staff Director

FROM: Patricia C. Orrock
Chief Compliance Officer

Patricia Orrock

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Date: 2015.07.02 12:28:11 -04'00'

Thomas Hintermister
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Douglas Kodish
Audit Manager

Douglas Kodish

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Paula Nurthen
Lead Auditor

SUBJECT: Oakland County Democratic Party (A12-02) – Referral Matters

On June 18, 2015, the Commission approved the Proposed Final Audit Report on the Oakland County Democratic Party. The report was released to the public on June 29, 2015. In accordance with the Materiality Thresholds for Unauthorized Committees, the Final Audit Report of the Commission includes findings that meet the criteria for referral to the Office of General Counsel. Also, Finding 1– Misstatement of Financial Activity and Finding 5 – Use of the Campaign Depository meet the criteria for referral to the Office of Alternative Dispute Resolution; however, they are being referred to your office in accordance with the policy.

Finding 1 – Misstatement of Financial Activity: Amounts in Violation (\$90,487 – Receipts and \$60,715 - Disbursements); Calendar Year (2012)

Finding 2– Recordkeeping for Employees: Amount in Violation (\$107,555); Calendar Years (2011/2012)

Finding 4 – Recordkeeping for Receipts: Amount in Violation (\$1,820,466); Calendar Years (2011/2012)

Finding 5 – Use of the Campaign Depository: Amount in Violation (\$1,370,304); Calendar Years (2011/2012)

Currently, this committee is involved in on-going Administrative Fines cases, it has one from the 2012 election cycle, #2683, and the rest from the 2014 election cycle, #2740, #2743, and #2889.

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding these matters, please contact Paula Nurthen or Douglas Kodish at 694-1200.

Attachments: Finding 1- Misstatement of Financial Activity.
Finding 2 - Recordkeeping for Employees
Finding 4 - Recordkeeping for Receipts
Finding 5- Use of the Campaign Depository

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Finding 1. Misstatement of Financial Activity

Summary

During audit fieldwork, a comparison of OCDP's reported financial activity with its bank records revealed that, for 2012, OCDP understated its reported receipts, disbursements and ending cash by \$90,487, \$60,715 and \$33,279, respectively. Subsequent to the exit conference, OCDP amended its reports and materially corrected its misstatements. In response to the Interim Audit Report recommendation and the Draft Final Audit Report, OCDP stated it has begun the process of complying with all recommendations.

The Commission approved a finding that OCDP misstated its financial activity for calendar year 2012.

Legal Standard

Contents of Reports. Each report must disclose:

- the amount of cash-on-hand at the beginning and end of the reporting period;
- the total amount of receipts for the reporting period and for the calendar year;
- the total amount of disbursements for the reporting period and for the calendar year; and
- certain transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 52 U.S.C. §30104(b)(1), (2), (3), (4) and (5).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reconciled OCDP's reported financial activity with its bank records for the calendar years 2011 and 2012 and identified misstatements for 2012 in receipts, disbursements and ending cash. The following chart outlines the discrepancies and succeeding paragraphs explain, to the extent possible, the reasons for the misstatements.

2012 Activity			
	Reported	Bank Records	Discrepancy
Opening Cash Balance @ January 1, 2012	\$5,356	\$8,863	\$3,507 Understated
Receipts	\$937,760	\$1,028,247	\$90,487 Understated
Disbursements	\$963,905	\$1,024,620	\$60,715 Understated
Ending Cash Balance @ December 31, 2012	(\$20,789)	\$12,490	\$33,279 Understated

The understatement of receipts resulted from the following.

- | | |
|---|--------------|
| • Gaming receipts not reported ¹ | \$ 76,233 |
| • Transfers from non-federal account not reported | 12,178 |
| • In-kind contributions not reported | <u>2,076</u> |

¹ See Finding 4, page 12.

Understatement of Receipts

\$ 90,487

The understatement of disbursements resulted from the following.

• Gaming expenditures not reported	\$ 36,229
• Operating expenditures not reported	33,899
• Expenditures reported twice	(10,056)
• Operating expenditures incorrectly reported	167
• Unexplained difference	<u>476</u>
Net Understatement of Disbursements	<u>\$ 60,715</u>

The understatement of the beginning and ending cash balances resulted from prior year misstatements and the misstatements described above.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff explained the misstatements and provided schedules to OCDP representatives. The representatives agreed to amend their reports.

Subsequent to the exit conference, OCDP amended its reports and materially corrected its misstatements. The Interim Audit Report recommended that OCDP provide any additional comments it considered relevant to this matter.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, OCDP provided no additional information regarding this matter.

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that OCDP amended its reports and materially corrected its misstatements.

E. Committee Response to the Draft Final Audit Report

OCDP responded to the Draft Final Audit Report and stated it has begun the process of complying with all recommendations.

Commission Conclusion

On May 21, 2015, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission adopt a finding that OCDP misstated its financial activity for calendar year 2012.

The Commission approved the Audit staff's recommendation.

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Finding 2. Recordkeeping for Employees

Summary

During audit fieldwork, the Audit staff determined that OCDP did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent in connection with a federal election. For 2011 and 2012, the Audit staff identified payments to OCDP employees totaling \$107,555, for which monthly payroll logs were not maintained. This consisted entirely of payroll which was allocated between federal and non-federal funds. In response to the Interim Audit Report recommendation and the Draft Final Audit Report, OCDP stated it has begun the process of complying with all recommendations.

The Commission approved a finding that OCDP failed to maintain monthly payroll logs to document the time employees spent on federal election activity totaling \$107,555.

Legal Standard

Maintenance of Monthly Logs. Committees must keep a monthly log of the percentage of time each employee spends in connection with a federal election. Allocations of salaries, wages, and fringe benefits are to be undertaken as follows:

- Employees who spend 25 percent or less of their compensated time in a given month on federal election activities must be paid either from the federal account or have their pay allocated as administrative costs;
- Employees who spend more than 25 percent of their compensated time in a given month on federal election activities must be paid only from a federal account; and,
- Employees who spend none of their compensated time in a given month on federal election activities may be paid entirely with funds that comply with State law. 11 CFR §106.7(d)(1).

Facts and Analysis

A. Facts

During fieldwork, the Audit staff reviewed disbursements for payroll. OCDP did not maintain any monthly logs or equivalent records to document the percentage of time each employee spent in connection with federal election activity. These logs are required to document the proper allocation of federal and non-federal funds used to pay employee salaries and wages. For 2011 and 2012, logs were not maintained for \$107,555² in payroll. The total of \$107,555 consisted entirely of payroll which was allocated between federal and non-federal funds.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference and during audit fieldwork, the Audit staff discussed the payroll recordkeeping issue with OCDP representatives. The representatives indicated that they did maintain some records for one individual but did not keep records for all required individuals. No records were provided.

For OCDP employees that were paid with an allocation of federal and non-federal funds, the Interim Audit Report recommended that OCDP provide the following:

² See Part I, Background, Commission Guidance, Request for Early Commission Consideration of a Legal Question – Recordkeeping for Employees, Page 1. Payroll is stated net of taxes and benefits.

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- evidence that monthly time logs were maintained to document the percentage of time an employee spent in connection with a federal election; or
- a plan to maintain monthly payroll logs in the future.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, OCDP agreed to comply with the recommendation to implement a plan to maintain monthly payroll logs in the future.

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that OCDP agreed to maintain monthly payroll logs in the future.

E. Committee Response to the Draft Final Audit Report

OCDP responded to the Draft Final Audit Report and stated it has begun the process of complying with all recommendations.

Commission Conclusion

On May 21, 2015, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission adopt a finding that OCDP failed to maintain monthly payroll logs to document the time employees spent on federal election activity totaling \$107,555.

The Commission approved the Audit staff's recommendation.

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Finding 4. Recordkeeping for Receipts

Summary

During audit fieldwork, it was noted that OCDP did not maintain adequate documentation and did not properly report receipts from its gaming activities totaling \$1,820,466 for the 2012 election cycle. OCDP reported gaming receipts as un-itemized individual contributions in accordance with requirements for receipts from individuals contributing \$50 or less at fundraising events based on its position that each gaming activity constituted a separate "event" under state law. However, the Commission subsequently determined that all activities on a single night were properly considered a single fundraising event.³ When all gaming activities were viewed as a single event, the average contribution from OCDP's bi-weekly gaming events was approximately \$88 per person, which requires more extensive recordkeeping activities. In response to the Interim Audit Report recommendation and the Draft Final Audit Report, OCDP stated it has begun the process of complying with all recommendations. However, OCDP said it disagreed with certain unspecified aspects of the report that concerned its gaming activities.

The Commission approved a finding that OCDP failed to maintain adequate documentation for its gaming activities and did not properly report its receipts from gaming activities totaling \$1,820,466.

Legal Standard

A. Recordkeeping. Political committees must keep records of:

- All contributions received by or on behalf of the committee;
- The name and address of any person who makes a contribution in excess of \$50, together with the date and amount of the contribution; and
- The occupation and name of employer of any individual whose contributions aggregate more than \$200 during a calendar year, together with the date and amount of any such contributions. 52 U.S.C. §30102(c).

B. Retention of Check Copies. For contributions in excess of \$50, committees must maintain a photocopy or digital image of the check or written instrument. 11 CFR §102.9(a)(4).

C. Preserving Records and Copies of Reports. Committees must preserve these records for 3 years after a report is filed. 52 U.S.C. §30102(d).

Facts and Analysis

A. Facts

OCDP did not maintain adequate documentation and did not properly report receipts for its bi-weekly gaming activities totaling \$1,820,466⁴ for the 2012 election cycle.⁵ Michigan state law governs Michigan gaming activities and recordkeeping requirements. Accordingly, records were kept of the number of attendees and the quantity and price of gaming cards, books and tickets sold (all gaming sales transactions are for cash).

³ See Part I, Background, Commission Guidance, Directive 69 and Request for Early Commission Consideration of a Legal Question – Recordkeeping for Receipts, Page 2.

⁴ This amount does not include errors in recordkeeping for checks deposited into OCDP's accounts that were not associated with gaming activities projected to total \$1,970.

⁵ In addition to the improper reporting of gaming receipts, OCDP did not report \$76,233 mentioned in Finding I, Misstatement of Financial Activity.

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However, federal election laws and regulations apply to the activities of federal political committees and those rules require a different set of recordkeeping and reporting requirements for contributions. The level of detail required in the records and reports of committees is a function of the contribution limits for individual contributors.

During the audit period, OCDP maintained records and filed reports as if contributions did not exceed the \$50 threshold.⁶ This approach was based in part on OCDP's position that each gaming activity constituted a separate fundraising "event" under state law. The \$50 threshold only requires records to identify the name of the event and the total amount received for the event. OCDP reported gaming receipts from events as un-itemized individual contributions in accordance with requirements for receipts from individuals contributing \$50 or less.

The Commission considered OCDP's position that each gaming activity held during a night was a separate event for aggregation purposes and that their records and reporting were adequate. As part of its consideration, the Commission sought information about separation of gaming activities and their administrative functions. In anticipation of these questions, the Audit staff held a teleconference with Committee personnel and were told that they had only one hall for all gaming activities; separate personnel were not used for the different gaming activities; and all gaming activity tickets could be purchased at any of the ticket purchase locations. No additional information was provided that would indicate separation of gaming activities. When viewed as a single fundraising event, the Audit staff calculated that the average gaming night contribution was approximately \$88 per person. As such, OCDP could not reasonably assure that contributions received aggregated to amounts of \$50 or less a night. Accordingly, to comply with the recordkeeping requirements for contributions over \$50, OCDP needs to collect more contributor information for its gaming events. Based on the above information, the Commission concluded⁷ that OCDP's bingo nights were not separate fundraising events, but were one event, and that OCDP was required to obtain the name and address of any person who made contributions in excess of \$50 during a gaming night, and then identify and report those contributors whose aggregate contributions exceeded \$200 during a calendar year. As a result, the Audit staff calculated that OCDP did not properly record and account for contributions totaling \$1,820,466, or 89% of OCDP's total contributions.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff presented this recordkeeping matter to OCDP representatives as an open issue for which additional Commission guidance would be sought. It was subsequently presented to OCDP representatives as a finding.

The Interim Audit Report recommended that OCDP provide records demonstrating that its gaming night contributions did not exceed \$50 per contributor. Absent such records, OCDP should have developed and implemented a plan to obtain and maintain a record of:

- the name, address, date and amount of any person contributing more than \$50; and

⁶ This recordkeeping threshold is discussed in the Federal Election Commission Campaign Guide for Political Party Committees and in Advisory Opinions 1981-48 and 1980-99.

⁷ See Part I, Background, Commission Guidance, Directive 69 and Request for Early Commission Consideration of a Legal Question – Recordkeeping for Receipts, Page 2. OCDP maintains that its recordkeeping procedures for the bingo events were in compliance with recordkeeping requirements prior to the further guidance issued by the Commission in response to OCDP's request.

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- the occupation and name of employer of any individual whose contributions aggregate more than \$200 during a calendar year, together with the date and amount of any such contributions.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, OCDP stated it has begun the process of complying with all recommendations. However, OCDP said it disagreed with certain unspecified aspects of the report that concerned its gaming activities.

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that OCDP agreed to comply with the recommendation, although disagreeing with certain unspecified aspects of the report that concerned its gaming activities.

E. Committee Response to the Draft Final Audit Report

OCDP responded to the Draft Final Audit Report and stated it has begun the process of complying with all recommendations. However, OCDP said it disagreed with certain unspecified aspects of the report that concerned its gaming activities.

After submitting its Draft Final Audit Report response, OCDP indicated that it had identified a point of sale system that will electronically track the receipt and disbursement of funds for each game participant through the use of a gaming card. The new system and procedures will facilitate OCDP's compliance with the Audit Division recommendation.

Commission Conclusion

On May 21, 2015, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission adopt a finding that OCDP failed to maintain adequate documentation for its gaming activities and did not properly report its receipts from gaming activities totaling \$1,820,466.

The Commission approved the Audit staff's recommendation.

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Finding 5. Use of the Campaign Depository

Summary

A review of OCDP's gaming operations found that OCDP did not deposit most of its gaming receipts into its designated campaign depository as required. During the audit period, OCDP collected \$1,820,466 from its bi-weekly gaming activities but only deposited \$450,162 into its campaign depository. OCDP disbursed the majority of these cash receipts (\$1,370,304) directly to prize winners and game workers. In response to the Interim Audit Report recommendation and the Draft Final Audit Report, OCDP stated it has begun the process of complying with all recommendations. However, OCDP said it disagreed with certain unspecified aspects of the report that concerned its gaming activities.

The Commission approved a finding that OCDP failed to properly utilize its designated campaign depository for most of its gaming receipts totaling \$1,370,304.

Legal Standard

A. Depositories. Each political committee shall designate one or more state banks, federally chartered depository institutions (including a national bank), or depository institutions, the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration, as its campaign depository or depositories. Each political committee shall maintain at least one checking account or transaction account at one of its depositories. All receipts received by such committee shall be deposited in such accounts. No disbursements may be made (other than petty cash disbursements) by such committee except by check drawn on such accounts in accordance with this section. 52 U.S.C. §30102(h)(1) and 11 CFR §103.2.

B. Deposit of Receipts and Disbursements. All receipts by a political committee shall be deposited in account(s) established pursuant to 11 CFR §103.2, except that any contribution may be, within 10 days of the treasurer's receipt, returned to the contributor without being deposited. The treasurer of the committee shall be responsible for making such deposits. All deposits shall be made within 10 days of the treasurer's receipt. A committee shall make all disbursements by check or similar drafts drawn on an account at its designated campaign depository, except for expenditures of \$100 or less made from a petty cash fund maintained pursuant to 11 CFR §102.11. Funds may be transferred from the depository for investment purposes, but shall be returned to the depository before such funds are used to make expenditures. 11 CFR §103.3(a).

C. Petty Cash Fund. A political committee may maintain a petty cash fund out of which it may make expenditures not in excess of \$100 to any person per purchase or transaction.

It is the duty of the treasurer to keep and maintain a written journal of all petty cash disbursements. The written journal shall include:

- Name and address of every person, to whom any disbursement is made,
- Date,
- Amount,
- Purpose, and

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- If disbursement is made for a candidate, the journal shall include the name of that candidate and the office (including State and Congressional district) sought by such candidate. 11 CFR §102.11.

Facts and Analysis

A. Facts

The Audit staff reviewed OCDP's records of its bi-weekly gaming events and found that OCDP did not deposit most of its gaming receipts into its designated campaign depository as required by 11 CFR §103.3(a).⁸ During the audit period, OCDP collected funds from 204 gaming events totaling \$1,820,466. However, OCDP only deposited funds totaling \$450,162 to its campaign depository, after having disbursed the majority of funds collected (\$1,370,304) to prize winners and to game workers. These cash payments did not utilize a petty cash fund for cash payments of \$100 or less and checks (or similar drafts) for amounts disbursed over \$100.

For the audit period, OCDP made total expenditures of \$2,060,864 with gaming expenditures comprising \$1,711,394 of this amount (83% of total expenditures). As discussed above, cash payments comprised the majority of gaming expenditures. However, for most recurring expenses, checks were used. Disbursements by check were made for hall rentals, gaming supplies, advertising and other items totaling \$341,090.

The table below summarizes cash payment activity for gaming.

Payment Type	Total Amount Paid	Description
Cash Prize Payouts Exceeding \$50.00	\$827,861	Records were maintained for each payment. Disbursements were itemized on reports as payments to individuals and contained the name, address, date, amount and purpose for each payment.
Cash Prize Payouts \$50.00 or Less	\$511,914	Records were not maintained of individual payments. Disbursements were reported as lump sum payments to "Non Voucher Bingo Prizes \$50 or Less" (no individual payee information was provided).
Other Cash Gaming Expenses	\$30,529	Records of miscellaneous gaming expenses paid to gaming workers in 2011 were not maintained. These disbursements were included as un-itemized expenditures in reported totals.
Total gaming Cash payments	1,370,304	

⁸ The Commission noted in a prior audit of OCDP, approved on March 28, 2001, that OCDP paid prizes using cash received from the sale of bingo cards. As a result of the prior audit, matters were referred to the Office of General Counsel for further enforcement (See MUR 5236). In that matter, the Commission found that OCDP had violated the requirement to deposit all its receipts and that it failed to properly itemize gaming disbursements. In the conciliation agreement with the Commission, OCDP agreed to correctly disclose all financial activity related to its bingo account, deposit all receipts from its bingo games into its designated depository and properly itemize disbursements that aggregate in excess of \$200 from its bingo account.

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B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff initially presented an open issue for recordkeeping for amounts of \$50 or less to OCDP representatives. This issue was later expanded to include all cash disbursements and subsequently presented to OCDP representatives as a finding for failure to utilize a campaign depository for all cash transactions.

In subsequent discussions about cash disbursements, OCDP responded that it complied with the Act's required use of a check or "similar draft" by using a "voucher system." Under the voucher system, prize winners fill out and redeem vouchers for cash. OCDP stated that it has used this system for years and the Michigan State Lottery Bureau was aware of it and permitted its use. In addition, OCDP cited two Advisory Opinions, 1982-25 and 1993-04, where the Commission allowed wire transfers and computerized bill paying, respectively, to satisfy the requirement of a similar draft. OCDP stated that, as in those opinions, the vouchers are not "operative commercial instruments" like checks, but they are documentation of the prize payment transaction, which is the goal of the regulations. OCDP indicated that the vouchers satisfy the requirements of a "similar draft" while avoiding the practical problems of writing and processing thousands of checks.

Although OCDP cited wire transfers and computerized billing as exceptions to the similar draft requirement, the Audit staff noted the regulations go beyond simple documentation requirements and that they specifically required the use of a campaign depository as cited above. Using a campaign depository ensures a clear paper trail linking disbursements to a 3rd party payor/record keeper and provides for a complete disclosure history for audit purposes.⁹

The Interim Audit Report recommended that OCDP develop and implement procedures to ensure that a campaign depository is used for all receipts and disbursements, including gaming transactions made with cash.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, OCDP stated it has begun the process of complying with all recommendations. However, OCDP said it disagreed with certain unspecified aspects of the report that concerned its gaming activities.

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that OCDP agreed to comply with the recommendation, although disagreeing with certain unspecified aspects of the report that concerned its gaming activities.

E. Committee Response to the Draft Final Audit Report

OCDP responded to the Draft Final Audit Report and stated it has begun the process of complying with all recommendations. However, OCDP said it disagreed with certain unspecified aspects of the report that concerned its gaming activities.

After submitting its Draft Final Audit Report response, OCDP indicated that it had identified a point of sale system that will electronically track the receipt and disbursement of funds for each game participant through the use of a gaming card. In addition, OCDP stated that it plans to

⁹ See Advisory Opinions 1993-04 and 1986-18.

change its current procedures and maintain an appropriate petty cash fund, sufficient to pay all game prize winners and game workers. The new system and procedures will facilitate OCDP's compliance with the Audit Division recommendation.

Commission Conclusion

On May 21, 2015, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission adopt a finding that OCDP failed to properly utilize its designated campaign depository for most of its gaming receipts totaling \$1,370,304.

The Commission approved the Audit staff's recommendation.

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